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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ATARI CORPORATION, ) Case No. C-89-0824-FMS  
Plaintiff, ) San Francisco, California  
vs. ) Wednesday, March 11, 1992  
NINTENDO OF AMERICA, INC.; ) 8:00 A.M.  
NINTENDO CO., LTD., ) JURY TRIAL  
Defendants. )

VOLUME XIX  
TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE FERN M. SMITH  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 Sega after that. So you had to go with Nintendo if you wanted  
2 to be in the marketplace.

3 Q. All right. Now there was discussion about your hand-held  
4 Lynx system which you acquired from Epyx, correct?

5 A. Yes.

6 Q. Do you believe that's been a successful product in the  
7 marketplace?

8 A. It is becoming more successful now.

9 Q. And why do you have that belief?

10 A. Well, our sales are expanding. I'll give you an example,  
11 in 1990 I think we sold about 60,000 systems in the U.S. In  
12 1991 it's 120,000 systems. In 1992, we're projecting over  
13 300,000 systems and we're getting broader distribution now.  
14 As the machine is selling better and we're getting more  
15 software titles on it, more current software titles, the  
16 retailers are carrying the machine in more areas now. We've  
17 opened up new retailers.

18 Q. All right. There's been a lot of reference to a David  
19 Ahl, who at one time was the publisher of Explorer magazine.  
20 I take it after Mr. Ahl's employment was terminated, that  
21 Atari has continued to publish the Explorer magazine. Is that  
22 correct?

23 A. Yes, that is.

24 Q. All right and we've handed -- we have marked some of the  
25 exhibits, A-1224 and A-1226, some of the recent versions of

1 Atari Explorer and since Mr. Ahl has left the company, Atari  
2 has continued to publish the Atari Explorer, is that correct?

3 A. Yes, we have.

4 Q. All right. Now you were not given an opportunity to  
5 explain why Mr. Ahl's services were terminated. Can you  
6 please tell us the basis on which his services were ter-  
7 minated?

8 A. It built up. The first instance happened after the  
9 Atarian magazine was stopped. We got invoices into head-  
10 quarters in Sunnyvale from a company called Seal Beach Company  
11 for I think about \$26,000 and I did not know who that company  
12 was. So I asked one of the people in the office to find out  
13 who is Seal Beach Company in New Jersey.

14 So that individual went ahead and did a search and  
15 couldn't find that company's existence. So that person called  
16 Mr. Ahl and asked him who was Seal Beach Company, and we found  
17 out either from Mr. Ahl or somebody else in the office, that  
18 Mr. Ahl and Betsy Staples owned that company, and it was  
19 basically a computer and a floppy disk drive and a monitor,  
20 and it had the mailing list of the Atarian on it and for those  
21 services, that the mailing list was on that computer, David  
22 Ahl was trying to charge Atari \$26,000 on the side. Not  
23 letting us know that it was his personal company.

24 Q. Did you think there was something inappropriate about  
25 that relationship?

1 A. Oh, absolutely. Major conflict of interest.

2 Q. And did you tell Mr. Ahl that?

3 A. Either I did or one of our other people did, yes.

4 Q. All right and at the time you had your disagreement with  
5 Mr. Ahl about the Atarian magazine, was he the one that  
6 possessed the subscriber list to that magazine?

7 A. Yes. Seal Beach Company would not give it back to Atari.  
8 So we could not get the list.

9 Q. And --

10 A. And I would not be held blackmail.

11 Q. All right. You say blackmail, was he demanding some sum  
12 of money from Atari in order to get -- in order for Atari to  
13 be able to get that subscriber list?

14 A. Yes.

15 Q. Do you recall what the amount of money was that he  
16 wanted?

17 A. I remember the \$26,000 number. I don't know if he tried  
18 to bring the number down or not after that.

19 Q. Okay. Do you remember, the Atarian only came out about  
20 three times, is that correct?

21 A. It was three times.

22 Q. Do you remember approximately how many subscribers you  
23 had to that magazine?

24 A. I think it was either 1500 or 1800 subscribers, somewhere  
25 in that range.

1 Q. Now you were shown a -- what Mr. Kirby referred to as a  
2 hostage note. A request to pay a bill I think for about  
3 \$32,000 to a printing company for the Explorer. Do you  
4 remember that?

5 A. Yes, I do.

6 Q. And the name of that company was Mack Printing, is that  
7 correct?

8 A. Correct.

9 Q. And was that bill paid?

10 A. Yes it was paid.

11 Q. And is Mack Printing still printing the Atari Explorer  
12 magazine today?

13 A. Yes, it is.

14 Q. Now, Mr. Kirby marked a letter dated 1990 from an  
15 attorney representing Epyx regarding an allegation that there  
16 was some delinquent payment due to Epyx by Atari Corp., and  
17 I believe you've testified that there's been no lawsuit filed  
18 over that.

19 Can you explain to us the payments that were in fact made  
20 by Atari to Epyx for the Lynx system?

21 A. Yes. It gets kind of complicated but I'll try to explain  
22 it. In the June time period of 1989 was when we acquired the  
23 Lynx system from Epyx.

24 I think that Atari Corp. paid \$1 million to Epyx to  
25 acquire the hardware rights to the Lynx.